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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
350 West 1st Street, Los Angeles, CA 90012

ABEL DE LUNA,

Plaintiffs,

-vs.-

CARLOS N. QUINTANA, DOES 1-10,

Defendants.

No.

COMPLAINT FOR:

1. **FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION;**
2. **STATE LAW AND STATUTORY TRADE NAME INFRINGEMENT**
3. **ACCOUNTING;**
4. **TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Plaintiff alleges:

JURISDICTION AND VENUE

1. These claims arise under the laws of the United States, particularly under the federal Lanham Act (15 U.S.C. § 1051 et seq.), and under the laws of the State of California, including California common law. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1138(a). Jurisdiction is also proper pursuant to the Court's supplemental

jurisdiction as provided in 28 U.S.C. § 1367 in that the state law claims alleged herein are so related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

4. This Court has specific personal jurisdiction over all of the defendants as each has purposefully committed, within the state, the acts from which these claims arise and/or has committed tortious acts outside California, knowing and intending that such acts would cause injury within the state.

5. Venue is proper in the United States District Court for the Central District pursuant to 28 U.S. C. §§ 1391(b) and 1391(c) in that some defendants reside in this District, transact affairs in this District and that a substantial part of the events or omissions giving rise to the claims herein occurred within this District.

THE PARTIES

6. Plaintiff Abel De Luna (hereinafter, "plaintiff" or "plaintiff De Luna") is a United States citizen and resident of the state of California.

7. Defendant Carlos N. Quintana (hereinafter "defendant" or "defendant Quintana") is a resident of the state of California. Plaintiff is informed and believes that defendant Quintana is a citizen of Peru.

8. The DOE defendants are individuals or entities whose identity is unknown at the time of filing of this Complaint, and who will be identified as soon as their identities are ascertained. Plaintiff is informed and believes, and based upon such information and belief alleges, that each of the defendants, including the DOE defendants, are responsible for the actions complained of herein and that in so acting, the defendants were acting as the agents of the remaining defendants.

GENERAL ALLEGATIONS

9. The musical group Sonora Tropicana was founded in or about 1985. Plaintiff Abel de Luna became the organizer, manager and owner of the musical group on or before approximately 1989, and from that time has exercised exclusive ownership and control over the live entertainment services of the musical group as

well as the sound recordings of the group.

10. Plaintiff Abel de Luna is the owner of the United States registrations of the SONORA TROPICANA mark, in international class 41 for services, namely, live performances by a musical band, Reg. No. 4,427,642, and in international class 9 for goods, namely, pre-recorded CDs, video tapes, laser disks and DVDs featuring pre-recorded music, Reg. No. 3,586,288. For both registrations, the drawing of plaintiff's mark is rendered as follows:

(Fig. 1: stylized SONORA TROPICANA mark.)

11. Defendant Carlos N. Quintana is a musician whose musical group performs under the name SONORA TROPICAL, as well as variations on the SONORA TROPICAL name, including "La Internacional Sonora Tropical de Carlos Quintana" ("The International Sonora Tropical of Carlos Quintana"), "La Internacional Sonora Tropical" ("The International Sonora Tropical"), "Carlos Quintana y la Internacional 'Sonora Tropicana'" ("Carlos Quitana and the International 'Sonora Tropicana'") and "Carlos Quintana y su Sonora Tropical" ("Carlos Quintana and his Sonora Tropical"). According to defendant, he has been using the Sonora Tropical name in its current iteration since 2014.

12. Frequently, the name "Sonora Tropical" used by defendant and appearing in print ads in connection with advertisements for the performances by his musical group, appears in stylized lettering similar to the stylized lettering in plaintiff's registered mark.

13. The salient term in plaintiff's registered mark is the term SONORA TROPICANA.

14. The salient term in the marks used by defendant's musical group is the

term SONORA TROPICAL.

15. The "Sonora Tropical" name used by defendant is confusingly similar to plaintiff's registered SONORA TROPICANA marks under the "sight, sound and meaning" test.

16. Plaintiff's SONORA TROPICANA mark is an arbitrary word derived from the word "Tropic" and is therefore a strong mark.

17. Defendant's mark is similar to plaintiff's registered SONORA TROPICANA marks, and defendant has used the word "Sonora Tropical" in his advertising in a way that imitates the stylized lettering of plaintiff's marks.

18. The services of plaintiff's musical group are related to the services of defendant's musical group in that they both operate in the Latin music arena, directed to Spanish-speaking consumers of such music.

19. The marketing channels of the services of plaintiff's musical group are similar to, or the same as, the marketing channels in which defendant's musical group renders its services.

20. As both plaintiff's musical group and defendant's musical group are directed to similar audiences, the degree of care that consumers may be expected to exercise when seeing or hearing advertisements for defendant's musical group is not expected to be such that they can distinguish the difference between the two groups based upon the names alone.

21. Plaintiff is informed and believes that there are instances of actual confusion with plaintiff's musical group created by defendant's use of the "Sonora Tropical" term in connection with the advertising and services of defendant's musical group.

22. The likelihood of defendant expanding his services into product lines that conflict with plaintiff's SONORA TROPICANA mark is highly likely, given plaintiff's long-time use of the SONORA TROPICANA mark in connection with goods, namely physical CDs, DVDs, etc., as well as with services.

23. Plaintiff is informed and believes that defendant's intent in selecting the "Sonora Tropical" mark for his musical group was to create an association with plaintiff's musical group "Sonora Tropicana" of long standing. Among other factors, plaintiff is informed and believes that one of the current iterations of the name defendant uses in connection with his musical group, i.e. "Carlos Quitana y su Sonora Tropical" ("Carlos Quintana and *his* Sonora Tropical") may suggest to consumers that there is more than one "Sonora Tropical" and that defendant's musical group is one of them. Given the proximity of defendant's name to the SONORA TROPICANA name that plaintiff owns and has used for over two decades, that suggestion may include the idea that defendant's group is a sister group or successor to plaintiff's group.

24. The activities of defendant stand to irreparably harm plaintiff and his SONORA TROPICANA mark, including the stylized SONORA TROPICANA mark plaintiff's group has used for well over two decades, by using defendant's "Sonora Tropical" name, a confusingly similar mark to that of plaintiff. The additional of defendant's personal name to the advertising for the goods and services of his musical group does not eliminate the confusion; it simply gives the impression that the goods and services of defendant's musical group "Sonora Tropical" is affiliated with plaintiff's musical group.

25. Defendant can be expected to continue using the "Sonora Tropical" mark to plaintiff's harm unless enjoined by this Court.

FIRST CLAIM FOR RELIEF

(FEDERAL TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION)

26. Plaintiff realleges and incorporate in this claim all previous paragraphs of this complaint.

27. This claim for relief arises under 15 U.S.C. § 1125(a)(1)(A).

28. Defendant's mark "Sonora Tropical" and its various iterations used by

defendant over a period of time are likely to cause confusion with plaintiff's SONORA TROPICANA mark so as to cause the members of the relevant public to believe that defendant's musical group is associated with or sponsored by plaintiff and plaintiff's musical group "Sonora Tropicana."

29. Plaintiff alleges on information and belief that defendants' actions have led to instances of actual confusion by promoters and consumers.

30. Defendant's actions constitute unfair competition in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

31. The actions of defendants, as alleged herein, have caused, or are likely to cause, damage to plaintiff's reputation and mark.

32. The actions of defendants and each of them as herein alleged were and are intended to cause confusion, have caused confusion, and will continue to cause confusion unless enjoined.

33. For each act of unfair competition, plaintiffs are entitled to recover actual damages as well as defendants' profits from such infringement.

34. Plaintiff is entitled to treble damages.

35. Plaintiffs are informed and believe that the acts of defendants complained of herein have been undertaken willfully and with the intention of causing confusion, mistake or deception.

36. Monetary relief alone is not adequate to address fully the irreparable injury that defendants' actions have caused and will continue to cause plaintiff if defendants' actions are not enjoined. Plaintiff therefore is also entitled to preliminary and permanent injunctive relief to stop defendants' ongoing acts of unfair competition.

SECOND CLAIM FOR RELIEF

(STATE LAW COMMON LAW AND STATUTORY TRADE NAME INFRINGEMENT AND DILUTION, AGAINST ALL DEFENDANTS)

37. Plaintiff realleges and incorporates in this claim all previous paragraphs

of this complaint.

38. This claim for relief arises under the laws of the State of California and is alleged against all defendants.

39. By their acts alleged herein, defendants have engaged in trade name infringement and dilution, California Bus. & Prof. Code §§ 14330 et seq., and §§ 14402 et seq.

40. Plaintiff is informed and believes that defendants have intentionally deceived the public by misrepresenting that the services of defendant's musical group are connected with plaintiffs' musical group and sound recordings by use of a confusingly similar name.

41. Plaintiffs are informed and believe that the acts of defendants described herein were undertaken willfully and with the intention of causing confusion, mistake or deception.

42. Monetary relief alone is not adequate to address fully the irreparable injury that defendants' illegal actions have caused and will continue to cause plaintiffs if defendants' conduct is not enjoined. Plaintiffs therefore are also entitled to preliminary and permanent injunctive relief to stop defendants' ongoing acts of unfair competition.

THIRD CLAIM FOR RELIEF

(ACCOUNTING, AGAINST ALL DEFENDANTS)

43. Plaintiff realleges and incorporates in this claim all previous paragraphs of this complaint.

44. This claim for relief arises under the common law of the State of California and is alleged against all defendants.

45. Defendants are in possession of information relating to monies paid to defendants from their actions described herein. The books, accounts, records, ledgers, etc. which will provide this information are in the possession of defendants and each of them. The amount of damages, profits and interest owing to plaintiffs

from defendants cannot be ascertained without an accounting by defendants and each of them.

46. Plaintiffs hereby demand, and are entitled to, an accounting of all monies received by defendants and each of them from their use of plaintiffs' mark and trade name.

FOURTH CLAIM FOR RELIEF

(TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AGAINST ALL DEFENDANTS)

47. Plaintiff realleges and incorporates in this claim all previous paragraphs of this complaint.

48. The continuing acts of defendant herein have harmed and continue to harm the interest of plaintiff in the use of the SONORA TROPICANA name and marks. If this court does not issue a temporary, preliminary and permanent injunction against defendants and each of them prohibiting the use of the name "Sonora Tropical" in connection with the goods and services of defendant's musical group, plaintiff will suffer irreparable harm for which there is no adequate remedy at law.

PRAYER

WHEREFORE, plaintiff prays for relief as follows:

1. For an order requiring defendants to show cause, if they have any, why they should not be enjoined as set forth below, during the pendency of this action.

2. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining defendants and each of them and their agents, servants, employees and co-venturers, and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from engaging in or performing any of the following acts:

(a) Using the name SONORA TROPICANA, or any confusingly similar or colorable imitation of the name, including the name "Sonora Tropical" and any name which includes the term "Sonora Tropical," in connection with advertising in any form, or in connection with the goods or services of defendants or any of them;

(b) Using the name SONORA TROPICANA or any confusingly similar or colorable imitation of the name, including the term "Sonora Tropical" and any name which includes the term "Sonora Tropical," in any manner for the purpose of enhancing the commercial value of the goods or services of defendants;

(c) Otherwise infringing or diluting the distinctive quality of plaintiff's service mark and trade name SONORA TROPICANA;

(d) Causing a likelihood of confusion, deception or mistake as to the makeup, source, nature or quality of plaintiff's or defendants' services;

(e) Contacting promoters, advertisers or other businesses for the purpose of offering the services of defendant and his musical group as SONORA TROPICAL or any confusingly similar or colorable imitation of the name, including any other name that includes the term "Sonora Tropical."

3. For an order requiring defendants to deliver up and destroy all promotional literature, advertising, goods and other material bearing the infringing, diluting or injurious designations.

4. For actual damages according to proof.

5. For prejudgment interest.

6. For an accounting.

7. For costs of suit.

8. For reasonable attorney fees.

9. For such other relief as the court may deem appropriate.

Dated: April 26, 2017

/s/Steven J. Eyre
Steven J. Eyre
Attorney for plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial of this action by a jury.

Dated: April 26, 2017

/s/Steven J. Eyre
Steven J. Eyre
Attorney for plaintiff